

Application No. 10/797,983

**REMARKS**

The Examiner's attention to the present application is noted with appreciation.

In the Office Action of March 9, 2006, the Examiner rejected claims 7, 20, and 24-29 under 35 U.S.C. 102(b) as being anticipated by Tien-Lai (GB 2 191 929 A). The rejection is traversed. The Examiner states that although Applicant has claimed and argued that the fermentation mixture of the present invention is layered onto the oil, Tien-Lai describes that "oil is present in the mixture and is mixed which would be layered on the oil." However, as the Examiner has noted, the oil is mixed in the mixture and any "layering" would not be the formation of a true discrete layer that remains unmixed as described and claimed in the present invention. Claim 7 has been amended to clarify that distinction, which is a structural distinction directed at the ultimate utility of the invention.

Therefore, Tien-Lai does not anticipate claim 7, and claim 7 is believed to be patentable. Thus, dependent claims 20 and 24-29 are also believed to be patentable.

The Examiner also rejected claims 7-8, 20-34, 37, 83-84, and 87 under 35 U.S.C. 103(a) as being unpatentable over Tien-Lai, Flensø et al. (U.S. 5,972,642), and Todd (U.S. 6,074,687). The rejection is traversed. For the same reasons given above, a combination of the cited references would not result in the present invention. Applicant has argued that such a combination would produce a modified baking recipe, and such a recipe cannot be based on the placement of a discrete layer of fermentation mixture over oil.

Further, because this is an obviousness based rejection, it is necessary to demonstrate or articulate how the person of ordinary skill in the art would be motivated to combine the references to make the present invention. The present invention relates to health therapy, whereas Tien-Lai relates to food that must be mixed and baked. Therefore, there would be no motivation to make the combination, nor would the combination result in the present invention, but rather a dough wherein the oil layer cannot be removed to apply as a therapeutic composition.

Therefore, claim 7 is believed to be patentable as are dependent claims 8, 20-34, 37, 83-84, and 87.

Application No. 10/797,983

The Examiner also rejected claims 7-8, 20-34, 84, and 87 under 35 U.S.C. 102(a) as being unpatentable over JP-08099813 A in view of Flønø et al. The rejection is traversed. For the same reasons given above, there would be no motivation to make the combination yielding the present invention, nor would the combination of the cited references result in the present invention.

In view of the above amendments and remarks, it is respectfully submitted that all grounds of rejection and objection have been traversed. It is believed that the case is now in condition for allowance and same is respectfully requested.

If any issues remain, or if the Examiner believes that prosecution of this application might be expedited by discussion of the issues, the Examiner is cordially invited to telephone the undersigned  
Respectfully submitted,

Date: June 9, 2006

By:

  
\_\_\_\_\_  
Vidal A. Oaxaca, Reg. No. 44,267  
Direct line: (505) 998-1505

PEACOCK MYERS, P.C.  
Attorneys for Applicant(s)  
P.O. Box 26927  
Albuquerque, New Mexico 87125-6927

Telephone: (505) 998-1500  
Facsimile: (505) 243-2542

**Customer No. 005179**

G:\AMDS\Mayeux\Mayeux\_Pain Balm\_OA Resp\_6-9-06.doc